What Happened to Upholding the Child?
The Supreme Court and the Americans with Disabilities Act

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When our government takes vast measures to correct a problem in society, its efforts are to be applauded. When it was determined that more than forty-three million Americans had some kind of a disability (Stefan, 110) and overwhelming evidence surfaced that this population had been discriminated against for far too long, our Congress took a vast measure to correct that problem. With the drafting of new legislation, a federal law emerged in 1990 to protect the rights and needs of those forty-three million people. This law, the Americans with Disabilities Act (ADA), was by far hailed as one of the most important junctures in America's history of civil rights, and was certain to bring about positive changes in society and its perceptions. But the act had been in effect for less than a decade when another branch of the government suddenly began stripping this promising law of its worth. The Supreme Court of the United States of America began turning down the ADA cases that came before it, ruling that the disabled parties who filed under the ADA could not get their rights as the federal law implied. In the years since, those who fight on behalf of the disabled population have become increasingly frustrated yet determined as ever to set the record straight again. The Supreme Court rulings set the precedence for lower courts, and if the rulings continue as they have, those forty-three million will find their rights, their accommodations, and the willingness of society to cooperate swirling down the drain of history. If the Supreme Court does not begin to listen to the advocates of those with disabilities, it will neither reduce nor prevent disability discrimination in the United States.

The Americans with Disabilities Act is indeed a young innocent child, but the movement behind the legislation is much older. Societal behaviors towards those with disabilities have been traced back three hundred years to colonial times. There were rarely any positive attitudes with

regard to individuals who "suffered" and it was widely believed that these persons must be kept separate from society and would be better off institutionalized. The Supreme Court of 1927 even went as far as to say that sterilization of the disabled was constitutional and would benefit society as the impression that "disability" would be passed from parent to child, thus overrunning and corrupting a "perfect" American society. But when two major world wars resulted in soldiers coming home with wounds that would never heal, and when those in the workplace suffered numerous injuries on the job, society began to accept the disabled little by little. Legislation, such as the Veterans' Rehabilitation Act, was drafted to give services such as Vocational Rehabilitation and employment training and opportunities to these people while the health and medical field expanded to include new technology and medicine that would aid in the lives of those living with a disability. But living independently as a disabled individual was rarely, if at all, encouraged or even considered. If that theory had been pursued by those outside the disabled community or their advocates, the movement that evolved after WWII and was strengthened after the Civil Rights Movement would not have occurred, or so strongly. Though the Civil Rights Act of 1964 made no mention of those with disabilities, it laid the groundwork for the social movement and encouraged disability activists and advocates to begin planning their own movement. There had never before been motivation to link those who were physically disabled with those who were blind, mentally challenged, or deaf—each disability had its own community and there had been no immediate need to connect them all together until it was evident that all races were now protected by federal law. Beginning in the early 1970's, disability groups began to quietly protest in cities across the United States. The most notable protests, however, were staged after President Nixon vetoed Section 504 of the Rehabilitation Act for the second time, and at the end of his last term in office. (It had been vetoed twice before becoming law.) At the beginning of Carter's presidency, the then-Department

of Health, Education, and Welfare (HEW) had refused to sign additional regulations pertaining to Section 504, so disability rights advocates and leaders of disability groups stormed the Capitol steps in Washington, D.C. on April 5th, 1977. After this the group of fifty or so individuals proceeded to the HEW building to confront the Secretary. The protesters, intent on his signing of the regulations, spent the night in a waiting room to let the government know the importance of the regulation and the significance of its being signed. Meanwhile in San Francisco, an even greater protest occurred at a regional HEW building where those who spent the night needed services that were refused to them by the buildings' guards. Intervention by the California Governor, as well as local groups willing to provide meals and religious services over the Easter weekend, sustained morale and later convinced the secretary of HEW to sign regulations of Section 504. Because the media filmed the protests at the Capitol as well as the D.C. HEW building, the public became more aware of this fight for rights and the movement had gained a great deal of respect. Even still, there were no full rights handed to those with disabilities. The next decade, up until the late 1980's, found several disability rights groups such as Disabled in Action and Disability Rights Education and Defense Fund, lobbying legislatures, encouraging grassroots efforts in local disability agencies and organizations, and meeting with policymakers. In 1983, President Reagan's task force began to look at three disability laws with intentions of changing them: Section 504, the Education for all Handicapped Children Act, and the Architectural and Transportation Barriers Act. Advocates of the Disability community met with policy advisors of Vice-President Bush and convinced him to demand that the task force leave the existing legislation alone.

The Americans with Disabilities Act is the single most significant piece of legislation regarding the disabled today. It has more power than both the Individuals with Disabilities Education Act (IDEA) of 1997 and the Rehabilitation Act of 1973 Section 504, which are the other

two main disability laws. This is simply because these acts deal with more specific issues. The IDEA is only to ensure that qualified disabled students who are between the ages of three and twenty-one receive services or other educational accommodations to which they are entitled. For instance, a hearing-impaired student will sit down with a Vocational Rehabilitation counselor and design a plan detailing accommodations that are needed and goals of the student throughout the rest of her education. Other disabled students may be placed in a separate classroom with a teacher and other accommodations to fit that child's specific educational needs. IDEA ensures also that federal funds are given to the state and local agencies so that these equal educational opportunities are made available to students. Section 504 was the first major law that gave disability a "civil rights status" (NCD). It has a broader scope than the IDEA, as its purpose is to prevent disability discrimination in all programs that receive monetary assistance from the federal government. This includes all levels of government, state and local, as well as educational institutions, corporations, and business organizations as well as many more entities. However, it does not require businesses to alter structures or provide wheelchair ramps, elevators, or disabled restrooms. Furthermore, once the ADA was enacted, all measures taken under Section 504 are measured by the standards set by the ADA. So the Americans with Disabilities Act by far surpasses all other laws in terms of ensuring equal rights for all persons who are disabled. It's been called the "most sweeping civil rights legislation . . . since the Civil Rights Act of 1964—one of the most important twentieth-century domestic initiatives" (NCD). Now that the strength of the law has been demonstrated and the need for it known, how did it come to be?

A staunch advocate for this Act is one man in Congress who, thanks to a deaf brother, realized the importance of the rights of the disabled and therefore gave his support and hand in authorship. Senator Tom Harkin understands firsthand the frustrations that persons with disabilities

face as he watched his younger brother, Frank, face obstacles because of his deafness. Frank was sent to the Iowa School for the Deaf in Council Bluffs, where the family learned the attitude of society towards those who had disabilities, even disabilities less limiting than others. Senator Harkin watched as his brother tried to obtain a driver's license (now common for deaf people) but was told, "deaf people don't drive" (NVRC web site). He watched as his brother was told what limited, blue-collar jobs were available for a person with his disability and talents. Frank had no say about his desires or what jobs he wanted—or even what he wanted to apply his own talents and interests towards. Cited as one of the main authors of the Americans with Disabilities Act in the Senate, Harkin has been quick to support any disability cause.

It was when George Bush, Sr. was President that the ADA as a bill was introduced in the Senate and was subject to heavy contemplation and debate. This bill was first reviewed by one senatorial committee (Committee on Labor and Human Resources) who also considered and included the input and endorsement of the Bush Sr. administration, then passed over to the House to five committees (Education and Labor, Public Works and Transportation, Rules, Judiciary, and Energy and Commerce). After their consideration, the bill passed through two joint congressional committees and then underwent eighteen joint congressional hearings during the 100th and 101st Congresses. This bill passed in both houses with a nearly unanimous bipartisan vote (NCD publications). On July 26th, 1990, President Bush signed the Americans with Disabilities Act into law.

Fairness and accessibility for persons with disabilities on the job is the focus of the first title of the ADA. It applies to six areas concerning employment: application, hiring, firing, promotion and advancement, compensation, and any other instances that may arise and are specific to the situation. Here are examples of each of these areas, each listed in Title I. A disabled person

applying for a job may not be asked to give details about his or her disability, nor can they be asked to complete a physical examination unless they have already been hired *and* all employees are required to take physical examinations. All that may be asked of them is whether they are able to perform the essential functions of the job with or without reasonable accommodation. After being hired, someone with a disability may not be discriminated against if they are qualified to perform a task and can perform that task to the best of their ability. If they are given a lesser task than a person of equal skill and ability, they have the right to file suit. Persons with disabilities cannot be fired on basis of their disability. For instance, if a mistake is made on the job that does not usually result in the termination of employment, and if someone who has a disability makes that mistake, they may not be fired. If a disabled worker is being considered for promotion, he or she must be given the equal amount of consideration as other employees considered for the promotion as well. If that person is the most qualified, then he or she deserves the job. No worker with a disability may be given less in payment than others working in that position, even if the disabled worker is performing only the essential functions of the job as opposed to a non-disabled worker who may put in more detail. There are several situations that may occur which need special attention and are not listed in the Act. These are determined on a case-by-case basis, keeping in mind the spirit of the above terms. Also within this section are several definitions for terms that set the standards for compliance within the law. One of these is a "qualified person" with a disability. It states as follows: "The term 'qualified individual with a disability' means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires" (ADA, Sec. 101[8]). Also included is the definition of a reasonable accommodation, as stated:

> "(A) [M]aking existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (B) job restructuring, part-time or modified

> work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities" (ADA, Sec 101[9].

There is also a defense for the employer, who may not be able to accommodate the disabled person on the job due to the cost of the accommodation, or "undue hardship." This definition, rather lengthy, states that the employer may consider the means and cost of the accommodation, the financial resources of the business, and the other employees of the business when determining if the accommodation is reasonable. As we can see, one title can contain a great deal of information. But there is more to the ADA and discrimination against those with disabilities than on the job.

Without Title II, persons with disabilities—particularly those with physical and mobile disabilities—would find it nearly impossible to gain access to public facilities. The majority of this title deals with transportation and ensuring that all types of public transportation from subways, trains, planes, buses, and more are accessible to those with physical and mobile disabilities. Yet this title also includes public agencies that provide a service, especially those run by state and local governments. Twelve types of such agencies are broadly defined, such that any kind of agency that falls under that category must comply with the Act. These may be anything from emergency response or public safety agencies, public schools, parks, prisons, and public hospitals. The way these policies are employed is as follows: if a person with a disability uses any facilities, he or she will not be charged any extra for their use, even if the manager or supervisor believes that person's disability may be potentially detrimental to the services, facilities, or other patrons of that entity. Also, if a person with a disability requests an accommodation at one of these places, say a deaf person requesting an interpreter at the local hospital, it is the duty of the entity to pay for accommodations to ensure that accessibility to services are equal. These agencies will also have to change existing policies to accommodate the disabled. For instance, many non-disabled people

noticed signs in businesses exempting trained seeing eye or hearing dogs belonging to blind and deaf people in their buildings. All public places must have TTY's placed where there are public phones for deaf and hard-of-hearing people. All public bathrooms must be made accessible to accommodate persons who use wheelchairs or who cannot use their hands to the full extent of a non-disabled person. Even historic buildings such as courthouses or state capitols need to add elevators in order to accommodate those who cannot use the stairs. This title was meant to ensure that all states and local agencies will be held accountable for the equal access of persons with disabilities to their respective services.

While Title II guarantees that public entities must ensure accessibility, Title III demands on many grounds that private entities provide accommodations for the disabled as well. This expands from the public hospitals to private doctor's offices, from public transportation to private companies that rent charter buses, from public schools to private institutions, places and businesses that offer examinations for educational or employment purposes, and more. In short, any entity, agency, or business that specializes in services to members of the general public must provide accommodations to the disabled, just as the state and local agencies must. They cannot offer separate services unless requested as accommodation by that person, nor can they deny accommodation to individuals accompanying the disabled person. For instance, if a blind person is accompanied by a seeing friend, that friend has as much priority and right to the elevator as the blind person who must use it. This title is the most significant policy in terms of accommodating persons with disabilities. It is here that the ADA is broader and more encompassing than any other piece of disability legislation.

As seen from above, the disabilities we tend to think of that need the accommodations are mobile; Title IV reminds us that the deaf and hard of hearing need special accommodations in order

to more fully participate in society. While Titles II and III state that TTY's, or telecommunication telephones for the deaf, are provided in public and private entities, Title IV goes beyond ensuring that they are functional. (A TTY works just like a hearing person's phone, but instead of speaking, there is a keyboard to type the message and a screen to receive the incoming message.) Therefore, all major phone companies such as AT&T, Sprint, or MCI must also have relay services available that provide equal and all services to deaf or mute people who rely on TTY's for long-distance communication as they do for hearing phone users. Relay systems also provide services for conversations between hearing persons and their phones and deaf constituents and their TTY's. Title IV ensures that the phone companies charge equal rates for relay services as for regular phone service. In addition to phone service, Title IV regulates announcements on television. All public service announcements and those sponsored by the federal government must be closed-captioned so that all deaf and hard of hearing individuals may understand what is being said on TV. (Popular mandate has also stated that all televisions made after 1992 shall include decoders for captioning, as well as all videos and television programs sponsored in part by our federal government.) While there are other pieces of legislations that dictate more specific captioning and phone service requirements, the ADA provides the fundamental existence and functioning of these services. But Title IV's reaching out to the deaf and mute communities shows how expansive the ADA can be.

Drugs, transvestites, and immunity—all and more are included in Title V to help define what and what not the ADA will legally shelter in court. It could be called the "multi-subject" policy of the ADA, as it includes many different topics not broad enough to have its own title. First, one of the early policies of Title V that the Act mentions is that individual states in this country are not immune to suits under the ADA pursuant to the 11th Amendment of our Constitution. This means that any state institution of agency that is sued for violation of the law

cannot claim that they may resist participation in the suit because the eleventh amendment states that a person of *another* state may not bring suits against them. The next section of Title V protects people and those associated with them who have testified or participated in any trial or hearing under the ADA. Here, no person or agency may violently intimidate, pressure, or force these people to not take part in the service provided—especially if encouraging other non-disabled persons to take part in the same services. Third, the Act discusses attorney's fees: they must be reasonable to their party unless that party is the United States itself. Title V also designates when the government shall have come to full recognition of the Act and executes the policies to respective agencies (such as the National Council on Disability) for them to determine how quickly compliances are adapted. Fifth, anyone who uses or appears to be using illegal drugs or files suit under the ADA claiming disability solely due to being a homosexual, bisexual, transvestite, transsexual, or suffering from sexual disorders will not be covered. Sixth, legislators have designated themselves liable under this Act, so if they don't adhere to the ADA policies, they may be sued or taken to court. Finally, there is a severability clause within the Title: if any court deems any part of the ADA to be unconstitutional, that part will be stricken without affecting other policies within the Act. This is perhaps one of the most debated clauses in the ADA itself. While debate on this and other policies will surely continue and perhaps even expand, it may result in similar activities that helped the ADA to come into existence and for disability rights to be recognized.

If we are to understand the reasons behind the Supreme Court limiting its interpretation, we must first understand the high court itself. The Court today consists of nine members: Chief Justice William Rehnquist, Justice Antonin Scalia, Justice Ruth Bader Ginsburg, Justice Clarence Thomas, Justice Stephen Breyer, Justice David Souter, Justice John Paul Stevens, Justice Anthony Kennedy,

and Justice Sandra Day O'Connor. Each has been appointed by the president and confirmed by the Senate, and will serve a term for life. This court reviews cases only from federal appellate courts and state supreme courts, granting writ of certiorari (a demand of the records from the lower court regarding the case the Court has been asked to review), and all cases in question must pertain to a federal law such as the ADA. Rulings made by the Supreme Court are final and they also set the tone for rulings of lower courts, as the interpretations based on cases can change the meaning of our nation's laws. The current Court, led by Chief Justice Rehnquist, has a tendency to rule in a conservative manner, which is a caution note for civil rights activists as those Courts or Justices who rule liberally are often more sympathetic to their cause. Does this play a hand in the fight for disability rights? It very well may.

To catch the Supreme Court red-handed in limiting its interpretation of the Americans with Disabilities Act, it must be shown that the court has given the child support in its early years. The following cases serve as examples of both how the Court has allowed for a broad interpretation and then narrowed that interpretation after a few years. The first time the Court reviewed cases under the Americans with Disabilities Act was in 1998 after two cases were appealed from the federal appellate level. *Pennsylvania Department of Corrections v. Yeskey* and *Bragdon v. Abbott* both gave the disability community hope that the Supreme Court would continue to find favor with the law, but mixed reviews and eventually cases that ruled against the disabled litigant, such as *Sutton v. United Air* or *Board of Trustees v. Garrett*, disappointed many in the cause.

With the American's with Disabilities Act finally in effect, people with disabilities were not afraid to stand up for their rights, as the case of *Pennsylvania Department of Corrections v. Yeskey* in 1998. Prison inmate Ronald Yeskey, a first-time offender, was sentenced to eighteen to thirty-six months in a correctional facility in Pennsylvania. A court later recommended him to be placed

in a boot camp designed to encourage first-time offenders to not repeat their crimes, but the camp refused because Mr. Yeskey suffered from hypertension. Having been informed of their rejection, he immediately sued the institution responsible for overseeing the system, the Pennsylvania Department of Corrections, under Title II of the ADA. While attorneys for the state department fought that a prison inmate should not be protected under this law. Mr. Yeskey and his attorneys, meanwhile, read in the ADA that " . . . no qualified individual with as disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity . . . " (42 U.S.C. 12132). They believed that this would extend to the prisoner as the institution that held him was controlled by the state and was therefore a "public entity." The Federal District Court refused to consider the case, as a claim was not stated, and upheld the favor of the Department of Corrections. Mr. Yeskey appealed to the Third Circuit Court, who reversed the finding and agreed that under the ADA, Title II protected the petitioner. The Department of Corrections then appealed to the Supreme Court. The question raised by this petitioner was a referral to a previous case, *Gregory v. Ashcroft*, where the Supreme Court ruled that the Age Discrimination Employment Act of 1967 did not cover a state judge. If that federal law doesn't protect a state judge, why should a state inmate be protected here? As Justice Scalia, who delivered the Court's opinion, remarked, "State prisons fall squarely within the [ADA's] statutory definition of 'public entity'" (Findlaw.com). The significance of this case is that the Supreme Court ruled that several institutions or categories not listed in the ADA do apply to the law, especially that suits may be filed against states and their departments. This is a very broad interpretation because there are few, if any, borders to what may be called a "public entity." So even though the Pennsylvania Department of Corrections fought that prisons and prisoners are not

covered by the ADA simply because they are not listed, the Supreme Court showed what a broad interpretation it possessed in regards to this law.

The very same year, *Randon Bragdon v. Sidney Abbott* also showed how wide the Supreme Court was keeping the window open for interpretation of the ADA. Sidney Abbott was an HIV-positive woman who, at a dental office for a check-up, noted her disease on the registration form. Randon Bragdon, DDS performed the check-up on Ms Abbott and noticed that she had a cavity. His office's policy prohibited him to fill the cavity on HIV-positive patients, so he offered to take Ms. Abbott to the hospital and fill the cavity for free while she paid for use of the hospital's facilities and equipment. She adamantly rejected his offer and sued under the Americans with Disabilities Act, claiming that she had been discriminated on the basis of disability under Title III. Here, she sued under Title III, which states:

> "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who . . . operates a place of public accommodation" (42 U.S.C. 12182(a) qt. Supreme Ct).

A "public accommodation" does include private firms or organizations at which a service is given to members of the public, including places as a doctor's office or dental office. The defending party responded that the subsection of the clause was enough to refuse the service in the office. The subsection states that

> "Nothing in this subchapter shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of such entity where such individual poses a direct threat to the health or safety of others" (42 U.S.C. 12182(b)(3) qt. Supreme Ct).

It is important to understand that at the time Ms. Abbott went to the dentist's office, her HIV was not yet to the point of visible or obvious symptoms, but the courts still held that she fit the definition of "disabled:" having an impairment of a major life function. If fact, after researching

the AIDS virus the Supreme Court felt that she was disabled because her condition would severely affect her decision to reproduce in two ways: she would put her sexual partner at risk for HIV/AIDS and she would put a newborn at risk for the disease during childbirth. Because they felt that the continuation of life is a substantial part of the life process, the Court felt that reproduction qualified to be designated a "major life activity." Also of importance is that expert witnesses stated the near impossibility of viral transmission from patient to dentist during such dental procedures as cavity filling. Mr. Bragdon also failed to show that performing his procedure in the hospital would reduce the chances of transmission, as well as evidence that the hospital would be a safer environment for such a procedure to take place. What is the significance of this case? The Supreme Court too has viewed it through a broad interpretation of the ADA. Disability is defined by major life activities that are limited by the disability. Now that list may include activities not thought of to be simple, visible, everyday, or taken-for-granted abilities but rather almost any activity that has to do with life. Also, this case, like *Pennsylvania Department of Corrections v. Yeskey*, resulted in another provision added to a definition within the Act. *Yeskey* added that a prison and disabled prisoners are institutions and persons covered under the ADA, while *Abbott* added another clause to define "major life activity." It seemed as though the disability community and its advocates were facing an easy battle on the implementation and interpretation of the Americans with Disabilities Act.

But this battle soon turned for the worse as the Supreme Court bit back with its ruling on *Sutton v. United Airlines* in 1999. Twin sisters Kimberly Hinton and Karen Sutton suffered from a severe form of myopia, which affects eyesight. However, both sisters successfully completed flight school and passed the Federal Aviation Association's standards for pilots qualified to fly commercial airplanes. When applying to United Airlines for employment, both sisters were invited

for interviews with the airline, suggesting that they were among the top prospective employees. But once at the interview, both were told that they would be rejected due to their disability. Together they filed suit under Title 1 claiming that not only were they impaired, they were also *regarded* by United to be disabled and had been discriminated in the application process. (The ADA does protect those who are regarded has having a disability.) According to the District Court, Ms. Hinton and Ms. Sutton did not file an easily remedied claim and thus dismissed the complaint. The Tenth Circuit Court of Appeals ruled in the same manner. And so did the Supreme Court. What was the main issue asserted? Whether or not the sisters were truly disabled. With the use of glasses, her vision was nearly at 20/20—from 20/400. Both argued under guidelines set forth by the Equal Employment Opportunity Commission and the Department of Justice, which state that mitigating measures shall not be considered in the determination of a disability. (Yet it is interesting to note that a deaf person who wears hearing aids to fulfill a major life activity will still be disabled even though the hearing aids or a cochlear implant will make up for a great deal of loss; a diabetic who relies on daily insulin injections to fulfill a major life activity will still be disabled even though their body is now replenished with insulin.) United Air argued that those guidelines did not coincide with the language of the ADA—the "substantial limitation" must actually exist without the use of those assistive devices. The majority opinion of the Court was that the Act had not been written by Congress to accommodate those who used corrective measures to mitigate their disabilities. However, Justice O'Connor, in stating the Court's opinion, said that

> "[t]he Tenth Circuit's decision is in tension with the decisions of other Courts of Appeals. See, e.g., *Bartlett v. New York State Bd. of Law Examiners* . . . holding self-accommodations cannot be considered when determining a disability . . . [or] *Baert v. Euclid Beverage, Ltd.* . . . holding disabilities should be determined without reference to mitigating measures . . . " (Findlaw).

Title I does state that an "individual with a disability [so long as they are qualified], with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." Both sisters were qualified by graduating from flight school and having met all FAA standards. But perhaps Congress' and the ADA's definition of disability intended that such persons be covered. The Department of Justice seems to agree, as noted above. Justices Stevens and Breyer both noted in their dissent of *Sutton* that the Senate Report specifically cited how these devices and measures were not to be taken into consideration in determining disability (Findlaw). They also noted that the decision of the Court has "failed to acknowledge that its narrow approach may have the perverse effect of denying coverage for a sizeable portion of the core group of 43 million [disabled people]" (Findlaw). There is strong opinion and evidence that the ruling should have been made in favor of the petitioners.

But what seemed to be a nail in the coffin was the case of *University of Alabama v. Garrett* in 2001, where states were not granted immunity from the ADA. This case was actually two separate cases as two Alabama state agencies had been sued under the ADA. Patricia Garrett was the Director of Nursing at the University of Alabama in Birmingham Hospital in the OB/Gynecology Department. She had been diagnosed with breast cancer and took a leave of absence from her work so that she could undergo treatment and overcome her illness. However, when she returned to work, she was informed that she would not longer be holding her position as Director of Nursing and had to re-apply to the hospital for a job. She was placed at a much lower position, as a nurse manager. Ms. Garrett filed suit under the ADA seeking monetary damages. Meanwhile, Milton Ash was a security office with the Department of Youth Services. Mr. Ash suffered from sleep apnea as well as chronic asthma, and was to avoid certain kinds of gasses and smoke. He asked that he be assigned to a shift that would limit his exposure to these substances

and his likelihood of falling asleep on the job, but was denied. After he contacted the Equal Employment Opportunities Commission regarding ADA violation on the job, the correctional facility evaluated his job performance significantly lower than the marks he had been receiving before making his complaint. He too filed suit under the Act for monetary damages. The Alabama departments fired back, saying that they could not be taken to federal court and sued for such damages under the Eleventh Amendment of the Constitution. As we noted from Title V of the ADA, Congress has the ability to override the Eleventh Amendment upon intention of doing so. But here the majority opinion felt that due to earlier rulings, their interpretation of this amendment now stated that states could not be sued by their *own* citizens, nor may unwilling states be taken to federal court and sued. The Court felt that if the legislation had been written in the spirit of the Fourteenth Amendment, which says that the States themselves cannot make any law that reduces "privileges or immunities" of any citizen, then this in accordance with the Eleventh Amendment leads to the conclusion that states are not necessarily required to accommodate the disabled. The Court had also stated that should Congress show a "pattern of discrimination" it could possibly fulfill the requirements of the above Amendments, yet the court listed a mere six examples in its delivered opinion. Justices Breyer, Stevens, Ginsburg, and Souter, in dissent stated that Congress had indeed shown a significant pattern of discrimination on disability, and proceeded to attach a list of three hundred examples as opposed to the six submitted by the majority opinion. The dissenting opinion felt that the accommodations of revised scheduling should have been granted to Mr. Ash and that discrimination had occurred in the demotion of Ms. Garrett. The ruling of the court had been 5-4 in favor of the State of Alabama.

In defense and helping to heal wounds, several national leaders have spoken in favor of the historical law. Marca Bristo, the chair of the National Council on Disability, states that

> "[t]he Supreme Court's interpretations of this historic law have been largely inconsistent with the original intent of Congress and President George H. W. Bush in enacting the law and the desire of the American public. The Supreme Court must not be a roadblock in the promotion of policies that guarantee equal opportunity for all people with disabilities. People with disabilities must be afforded every opportunity to enter the mainstream of American life" (NCD).

Senator Patrick Leahy of Vermont, who is the ranking Democrat on the Senate Judiciary Committee, stated, "The Court [has] continued its assault on the powers of the people . . . An unelected court has substituted itself for the people's elected representatives in Congress" (Palmer).

The Supreme Court of the United States has changed its interpretation of the ADA in very recent years. Persons with disabilities are finding it increasingly difficult to obtain their rights under the Act, which should not be found unconstitutional. From the above discussion, it is obvious that two very important points of the Americans with Disabilities Act have been limited. We've seen how broadly the definition of "disability" was determined—to a woman with HIV/AIDS—and then limited such that people who wear glasses or other mitigating measures could not necessarily claim that they had a disability. Another important issue is that the ability of citizens to file suit against a state agency has been grossly diminished. Mr. Yeskey was able to file suit against the Pennsylvania Department of Corrections and win, whereas two Alabamans were wrongly discriminated against by state agencies and lost because the Court now ruled that States are immune to such suits. Yet neither the federal government nor local agencies are immune under the ADA and the Court's interpretations. With the Courts rulings in the past few years, the field of disability rights is sure to grow controversial in the next decade. It will be an important cause to follow as the rights of forty-three million or more people will be affected, and nearly everyone today will be touched by this movement in some way or another—disabled or not.

The process of my research has taken place over a great deal of time. I began in the spring of 2002 with searches on EBSCOhost and in Central College's Geisler Library. As it became

apparent to me that not many valid academic sources were available in these locations, I turned to government sites, making exclusive use of the National Council on Disability web site and publications online. I continued this research into the summer where I also discovered Findlaw, an online legal source that proved beneficial to my research with the official text of the United States Supreme Court certiorari and opinions. This was another very significant source that enabled me to analyze the actual decision. Last but not least was the text of the Act itself, which was located on the United States Department of Justice web site. Reading the actual law and its content gave me the opportunity to conduct my own research along with the text of the Court's opinions. This information and research will prove beneficial as I plan to continue researching disability law and follow the current events of disability cases heard by the Supreme Court.

Looking over the books that I've used in my research, I found that while one or two have given me wonderful examples and quotes, there were very few that are recent enough to show how the Court has turned against the ADA. Because research books are often time-consuming and may take time to reach the publisher or press, and because these cases are all very recent, changing, and new cases coming out every year, it makes a significant compilation of this interpretation rather difficult. The disability rights movement as we know it today, with individuals striving to gain independence, leadership skills, advocacy, education, and retention of employment has largely developed after the passing of the ADA and is the "baby" or "child" civil rights movement along with gay rights. Therefore, few books were available to me in my research of this topic. The only book proving very useful was Legal Rights: the Guide for Deaf and Hard of Hearing People, written by attorneys who are staff members at the National Association of the Deaf Law Center and Department of Government Affairs.

My other sources are primarily from publications written by journalists outside the disability or legal community. These were not expert opinions and in fact were merely a summation or news release of court cases or other disability events. There has been very little research outside the disability community and its advocates. In fact, according to Stephen Percy in the Policy Studies Journal, "Congress has had no hearings on the law since its enactment, and practically no federal government funds have been allocated for the research on the effect of ADA implementation" (qt West).

Because the Supreme Court ruled two ways on one piece of legislation, I had no difficulty determining my independent, dependent, and control variables in this research. I determined that the dependent variable is the disabled litigant, for in order for a case to be filed under the ADA, a party must be present that has reason to initiate such a suit. The independent variable is the Court's ruling, for it has gone either for or against the disabled litigant. Finally, the control is the two cases on which the Court ruled in favor of the disabled litigants and set precedents on definitions contained in the Act, which allows us to see how the interpretation has changed.